IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 35 OF 2002
IN
SUMMONS FOR JUDGMENT NO. 478 OF 1999
IN
SUMMARY SUIT NO. 622 OF 1999

1. Mr.Sushil Kumar Sinha)
2. Mrs.Sapna S.Sinha,)
of Mumbai, Indian Inhabitant) .. Appellants.
r/a B-6, Rajendra Apt., L.J.) (Org.Defendants
Cross Rd.No.1,Mahim,Mumbai-16) Nos.2 & 3).

V/s.

1. Crystal Chemical Industries)
a registered partnership firm,)
factory at Plot No.318/2,)
Forty Shed Area, GIDC,)
Vapi -396195, Gujarat)
)
2. Jips Dyechem Industries)
a partnership firm, office)
at 27/A, Noble Chambers,)
4th floor, Mumbai 400 001.)
) .. Respondents.
3. Mr.Pradeep Kumar Tandon,) (No.1-Org.Plain-
carrying on business at Jips) tiffs,
Dyechem Industries, 27-A, Noble) Nos.2 & 3, Org.
Chambers, 4th floor, S.A.Brelvi) Defendants).
Road, Fort, Mumbai -400 001.)

Mr. Anil Lulla with Mr. A.C.Mahimkar for the Apepllants.

Mr.S.A.Bhagwat i/by Mr.H.Nagi for the Respondent No.1.

CORAM : R.M.LODHA & S.A.BOBDE,JJ.

DATED : 22nd NOVEMBER, 2006.

ORAL JUDGMENT : (Per R.M.Lodha,J)

. We heard the counsel for the parties.

2. It is not in dispute that four cheques namely, (one) Cheque No.418009 dated 01.10.1995 for a sum of Rs.1,00,000/-, (two) Cheque No.418010 dated 01.12.1995 for sum of Rs.1,00,000/-, (three) Cheque No. 418011 dated 02.02.1996 and (four) cheque No.418012 dated 02.04.1996 for sum of Rs.75,000/-, all drawn on Dena Bank, were issued by the defendant No.1 firm, namely, M/s. Jips Dyechem Industries. It is also an admitted fact that all these cheques were signed by defendant Nos. 2 (appellant No.1) and the defendant No.4. All these cheques were returned dishonoured. The plaintiff-respondent No.1 called upon the defendant No.1 (the partnership firm) and defendants Nos. 2,3 and 4 (partners), to make payment of dishonoured cheques by various letters dated 15.01.1996, 13.02.1996, 04.04.1996 and 17.05.1996. However, the defendants failed to pay the said amount, resulting into criminal as well as civil proceedings.

3. By this suit filed under order XXXVII of the Code of Civil Procedure, the Plaintiffs have claimed a decree in the sum of Rs. 05,66,982/- with further interest on principal amount of Rs.3,75,000/- at the rate of 18% per annum from the date of filing of the suit till payment or realisation.

4. After the writ of summons was served, the plaintiffs took out summons for judgment. The firm-defendant No.1 despite service did not appear. The defendant No.4 settled the dispute. However, the defendant Nos.2 and 3 (the appellants herein) resisted the summons for judgment by filing reply affidavit. Principally the plea of the defendant Nos.2 and 3 was that the said cheques were obtained by the plaintiffs forcibly under threat and duress. The defendant Nos.2 and 3 also set up the case that there was no business dealing between the defendant firm and the plaintiff firm and therefore, no liability can be fastened on the firm, much less upon the defendants Nos. 2 and 3, who are partners therein.

5. Incidentally, it may be noticed that the appellants were also prosecuted under section 138 of the Negotiable Instruments Act and the court of 11th A.C.M.M. at Banglore, sentenced the appellants to undergo R.I. for six months and fine of Rs.1,50,000/- and in default of payment of fine, further R.I. for three months. In the appeal preferred by the appellants, the 4th Additional Sessions Judge at Banglore modified the sentence and directed the appellants firm and the defendant No.4 to pay a fine of

Rs. 20,000/- each and out of the fine collected, it was directed that a sum of Rs.75,000/- shall be paid to the complainant (the plaintiff herein). The said order was maintained by the High Court of Karnataka as well as by the Supreme Court of India.

6. The learned single Judge cannot be said to have erred in rejecting the defence of the appellants that the cheques were obtained forcibly by the plaintiff under threat or duress. We find no justifiable reason to take a different view. There is also no merit in the contention of the appellants that there were no business dealing between the plaintiffs and the first defendant firm. The cheques have admittedly been issued by the first defendant firm. The said cheques were signed by the defendant No.1. If there were no business dealings between the plaintiff and the defendant No.1 firm, the said cheques would not have been issued. The appellants (defendants 2 and 3) being partners are jointly and severally liable for the liability of the firm. Having taken the entire facts and circumstances into consideration, we find that the appellants have not been able to show any meritorious defence. As a matter of fact they have no defence whatsoever. However, the learned trial Judge showed mercy and granted conditional leave, by asking the appellants to deposit a sum of

Rs.3,00,000/-. It is true that the fine deposited by the appellants cannot be taken into consideration for the discharge of civil liability, but having regard to the facts and circumstances of the case, in entirety, we are of the view that conditional leave to the appellants on deposit of Rs.2,50,000/- shall meet the ends of justice.

7. We, accordingly, modify the impugned order only to the extent that leave granted by the learned trial Judge to the Appellants to defend the suit is conditional on appellants depositing a sum of Rs. 2,50,000/- (Rupees two lakhs and fifty thousand) within six weeks from today.

8. If the amount of Rs. 2,50,000/- is not deposited within six weeks from today, the conditional leave granted to the appellants shall stand automatically revoked without reference to the court.

9. Upon deposit of the amount, liberty to the plaintiffs to apply to the learned trial Judge for withdrawal of the amount.

10. No order as to costs.

(R.M.LODHA,J.)

(S.A.BOBDE,J.)

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